Department of Justice

Legal Aid Engagement Paper – Improving Impact and Value for Money by Reforming Scope and Merits

A response by the Association of Personal Injury Lawyers

May 2026

Introduction

APIL welcomes the opportunity to respond to this engagement paper on proposed reforms to legal aid.

Legal aid is incredibly important in ensuring that those who are vulnerable have access to justice. In personal injury and clinical negligence claims, there is a high success rate for cases legally aided. Providing legal aid for personal injury and clinical negligence cases also ensures that money is recouped back to the hospital and other services that may have been involved with the treatment of the injured person.

We recognise, however, that legal aid eligibility has been tightened consistently over the years which has created a funding gap in Northern Ireland. A significant proportion of claimants cannot access legal aid. We urge the Department to consider a review of the operation of the after-the-event (ATE) insurance market and the level of expert fees. A review of ATE premiums and expert fees could go some way into addressing the funding gap.

If legal aid is removed, we believe the best alternative is conditional fee agreements with recoverable ATE premiums. We strongly believe that legal aid must not be removed without an alternative – a new funding system should be implemented gradually as legal aid is phased out.

We strongly disagree that the introduction of a digital portal would replace legal advice. We have provided evidence on the operation of the Official Injury Claims (OIC) portal England and Wales for the Department's consideration. The reforms were intended to introduce a 'quicker and slicker' approach to claims, with injured people being able to follow the process and access compensation without needing a lawyer. This is not the reality: the number of unrepresented claimants using the system is strikingly low and data shows that they struggle to grapple with the system.

We have only responded to the questions within our remit.

<u>Reform Option 4: Restricting legal aid to applicants whose standing is no greater than other potential claimants in the same matter</u>

Discussion Point - Public Interest Litigation: Please give your views on 'public interest' litigation should be defined and assessed to ensure fairness and transparency. Please also explain whether you believe funding these types of cases represent value for money and whether restricting funding for public interest cases undermines important legal protection or systemic fairness. Please also identify any risks or unintended consequences that could arise if funding were removed.

Our members' feedback is that legal aid is helpful to fund these cases, in particular human rights issues and legacy cases.

Discussion Point - Pro Bono services and IOLTA/ILCA schemes: Please give us your views on how these schemes could be strengthened or integrated into the broader legal aid framework in Northern Ireland, to best support public interest litigation and litigants in person. Please also include what you think should happen with interest incurred whilst client funds are in legal practitioner bank accounts, i.e., should this be returned to the client, used by the legal practice to fund pro-bono services, or transferred into an IOLTA/ILCA scheme.

Due to the nature of PI litigation, client money is not often kept in client accounts for a long time. Our members' feedback is that the rules on holding client money and regarding client accounts more broadly are strict and would not accommodate for an IOLTA/ILCA scheme.

Members report that firms are subject to frequent audits and client damages must be paid out as soon as reasonably possible following receipt by the firms. As a result, there is no opportunity for interest to accrue.

A key concern is the level of regulatory and legislative intervention that would be required to introduce such a scheme. It is unclear which body would have oversight and responsibility for monitoring compliance, particularly given the already high level of regulation of solicitors and firms. The introduction of a scheme of this nature is likely to be onerous and a huge administrative burden, not only for firms, but also for the Government. We also query regarding the cost and the funding required to establish any scheme.

<u>Reform Option 5: Focusing legal services on personal injury cases involving significant harm, complex legal issues, or long-term impact</u>

Discussion Point - Access and Equity: Please share your views on alternative funding models (i.e., conditional/contingency fees agreements, claim management services) which could be introduced alongside any reform option discussed within this paper.

We believe that legal aid should be maintained for personal injury and clinical negligence cases.

Legal aid plays a vital role in ensuring access to justice at a fraction of the total legal aid budget, with a high success rate. In successful claims, costs are recovered from the other party through the "polluter pays" principle. Providing legal aid for personal injury and clinical negligence cases also ensures that money is recouped back to the hospital and other services that may have been involved with the treatment of the injured person.

Data obtained by APIL in a Freedom of Information (FOI) request to the Legal Services Agency Northern Ireland (LSANI) shows a 76 per cent success rate for legally aided personal injury cases (2025/26). This illustrates that legal aid is being used effectively to support valid claims, ensuring justice for those who might not otherwise afford it. Further, for the financial year 2024/25, the provision of civil legal aid cost around £119 million to the Department of Justice[1]. The data obtained in our FOI request reveals that legal aid expenditure for personal injury claims and clinical negligence claims was only around £2

[1] https://www.justice-ni.gov.uk/news/legal-aid-northern-ireland-annual-statistics-march-2025-published-today

million for the same financial year. The figures illustrate our argument that civil legal aid comes at a low cost for the LSANI while maintaining access to justice for injured people. It is essential that those on low incomes are able to access the compensation they require to put them back, as closely as possible, to the position they were in prior to their injury.

Funding, ATE and expert fees

We recognise, however, that due to cuts to the eligibility criteria over the years, legal aid is not available to a considerable proportion of claimants. There is currently a funding gap in Northern Ireland whereby injured people have to rely on private funding or arrangements where law firms will take the risk and take up the costs of claims upfront. We believe that the Department should consider a review of the operation of the after-the-event (ATE) insurance market. The lack of competition in the market currently means that the premiums for ATE insurance are excessively high, which can be a barrier for injured claimants to access justice.

Another important consideration is the availability of experts and the level of fees charged. In personal injury cases expert evidence is essential to progress a claim, and the total cost for expert reports needed for serious injury cases is often in the tens of thousands. Currently, where claimants are not eligible to legal aid, they or the firms representing them, will have to fund these extremely expensive reports. If a firm is not in a position to pay for the expert fees upfront, most claimants will be unable to fund expert fees themselves and will therefore be unable to proceed with their claim. We suggest that, as part of the review of the level of expert fees charged, the Department should consider the role of medical agencies. Medical agencies allow the payment of expert fees to be deferred until the conclusion of the claim. This is important not only for access to justice, but from a cashflow perspective for firms. A review of ATE premiums and expert fees could go some way into addressing the funding gap.

Alternative to legal aid

As mentioned above, our view is that legal aid should continue to be provided for personal injury cases. However, if legal aid were to be removed, a workable alternative funding mechanism must be put in place. The new system should be implemented gradually as legal aid is phased out. To remove legal aid before any alternative system is put in place will create a gap in funding and result in a denial of access to justice for injured people.

We believe that the most appropriate funding model, in the absence of legal aid, would be the introduction of conditional fee agreements with success fees recoverable from the defendant. When legal aid for personal injury cases was cut in England and Wales, the Government instead put in place a structure which allowed solicitors to take on cases which had a good prospect of success. Conditional Fee Agreements (CFAs) coupled with ATE insurance (which protects claimants from having to pay the defendant's costs if the claimant loses) and success fees (which allow the claimant solicitors to build up a fund to pay for those cases it took for claimants which did not succeed), both of which were recoverable from the defendant, and ensured that access to justice was maintained.

Money should not be taken from the claimant's damages. The function of damages is to put the claimant back, as closely as possible, to the position he would have been in had he not been injured. Members report that currently, deductions are being made from damages because successful claimants have to pay back ATE insurance premiums from their damages. Claimants are seeing their damages unfairly reduced to cover ATE insurance due to the absence of a provision making those costs recoverable. This is particularly concerning given that the price of ATE insurance premiums in Northern Ireland is extremely high. The

price of premiums may influence the types of cases that are taken forward by solicitors due to costs in order to ensure that cases remain financially sustainable. As explained above, it is important that there is competition in the ATE market to ensure that premiums are competitive and that cover can be obtained where required. We believe the model described, which operated in England and Wales before the 2013 reforms, would lead to the development of an ATE market in Northern Ireland.

Given that the ATE market is not yet properly developed, consideration could be also given to introducing a system of qualified one-way costs shifting (QOCS) supplemented by ATE insurance. ATE premiums should be recoverable, or at the very least legal aid should remain for those who cannot afford to pay an ATE premium. In England and Wales, QOCS operates by providing that, if a claimant is unsuccessful with their claim, they will not be ordered to pay the defendant's costs. A defendant will, however, still be ordered to pay a successful claimant's costs. This is "qualified", because the claimant loses this protection if they fail to beat the defendant's Part 36 offer to settle; the claim is found on the balance of probabilities to be "fundamentally dishonest"; or the claim is struck out as disclosing no reasonable grounds for bringing the proceedings, or as an abuse of process, or for conduct likely to obstruct the just disposal of the proceedings. ATE insurance would be required to supplement QOCS, as QOCS does not cover disbursements.

If the option of QOCS supplemented by ATE insurance is considered, care must be taken to ensure that the system is robust, and it must not lead to uncertainty or satellite litigation. There have been a number of pitfalls in the QOCS rules in place in England and Wales, particularly uncertainty around fundamental dishonesty and these issues should not be transferred to any model adopted in Northern Ireland.

APIL believes that whilst the model described with recoverable ATE is an alternative, it is not the same as legal aid. Recoverable success fees and ATE premiums are by far the best option to replace legal aid, as the system is based on polluter pays, and the successful claimant will be sure to retain one hundred per cent of their damages. The difficulties experienced in England and Wales, which led to the Jackson review and a funding model with success fees and ATE taken from the claimant's damages, were unique to that jurisdiction.

Discussion Point - System Design: Give us your views on whether you believe a digital claims portal could work here, including your views on the current infrastructure particular to Northern Ireland and any concerns about digital literacy levels. Please also let us know whether you believe there should be a cap on a claim value below which legal representation is not necessary and, if so, what should that threshold be?

We strongly disagree with the introduction of an OIC style digital claims portal in Northern Ireland. Digital reform in England and Wales should not be treated as a blueprint for digital reform elsewhere. The introduction of the OIC has been plagued with problems and has significantly disadvantaged injured people. The maturing data in relation to the OIC is now starting to evidence a reduced proportion of claims settling, claim delays, and fewer claims reaching court. The OIC's implementation process has meant that consumers have had their claims delayed and their compensation reduced. Delay denies justice as it leads to consumers accepting under-settlement of their claims, to avoid waiting for the claim to run through the process to secure the correct award.

We strongly disagree with the suggestion in the engagement paper that a digital portal would replace the need for legal representation. In England and Wales, the OIC was presented to the public as a simple online service designed for claimants to bring low-value RTA claims without the need for legal representation. However, the portal's complexity and programming defects have made the system difficult for unrepresented claimants to understand and navigate. Only 13% of claims submitted to the portal have been made by unrepresented individuals[2]. It is important to note that the real number of fully unrepresented individuals might be lower, as some of these 'unrepresented' individuals may be assisted by the at-fault insurer who they are claiming against.

The data also shows that unrepresented claimants struggle to grapple with the system and that the process is not the easy-to-use one promised by the Government. The guidance stretches to over 60 pages and is impenetrable for those who have no expertise in the system. The 137,656 claims submitted by unrepresented individuals have generated 87,522 calls to the OIC's support centre. This means that for every ten claims submitted by unrepresented individuals, more than six calls are being made to the OIC's support centre.[3]

Our members who support claimants through the process also report behaviours from defendant insurers which indicate that those who are not legally represented are at substantial risk of being undercompensated where there is a non-tariff element to the claim. While the amount of compensation received by unrepresented and represented claimants appears to be similar based on OIC data, this cannot be relied upon. Represented claimants are almost six times more likely than unrepresented claimants to have their case taken out of the portal in order to go to court. OIC data does not include cases which go to court.

APIL members have also provided evidence that indicates that court awards are between 80 – 147 per cent higher than the defendant's final offer.[4] With unrepresented claimants far less likely to go to court, it is reasonable to assume that those unrepresented claimants are being bought off and are receiving a sum of damages that is less than their injury is worth.

For the small number of claims which have settled in the system, the path to settlement has not been speedy. In March 2026, the average time from submission to settlement was 373 days (just over a year). This is an increase of 8% compared to March 2025, and an increase of 28% compared to March 2024. There is also a significant number of claims stuck in the system – almost 440,000 – awaiting any kind of resolution, either successful or unsuccessful. This represents 35% of all claims which have been submitted to the OIC.[5]

APIL conducted opinion polling to understand public perceptions of the whiplash reforms/ the OIC portal in England and Wales. As part of the polling, people were asked how they would feel about claiming compensation for injuries affected by the 'reforms' if they did not have legal support. If they did not have legal advice, just 27% of adults in England and Wales say they would trust the at-fault insurer to offer them a fair amount of compensation. When provided with an explanation about the steps involved with claiming compensation on the OIC portal, fewer than a third (29%) said they would be likely to complete this whole process on their own, without legal advice. Just 12% said they would be likely to complete the

[2]APIL analysis of OIC data. The timeframe covered by this data is the period from the system's launch in May 2021 to 31st March 2026.
[3] ibid
[4] Data provided by APIL members
[5] APIL analysis of OIC data. The timeframe covered by this data is the period from the system's launch in May 2021 to 31st March 2026.

process without legal advice. Of those who used legal support to claim compensation for injuries captured by the 'reforms', 55% say they would have never considered claiming if they had not had this support.[6] Please see Annex 1.

For all the reasons above, we caution against arguments to follow the general direction of travel in England and Wales towards an OIC style portal. The introduction of the Civil Liability Act 2018 and associated reforms has introduced a justice gap for victims of negligence. Reported road casualties are up, but the number of motor claims by injured people are down. In 2024, the number of road injury claims was 34% lower than in 2020, even though the number of road casualties was 11% higher. This demonstrates that significantly fewer road injury victims are going onto access justice. While data on road casualties is not yet available for 2025, traffic volumes, a key indicator for the level of road casualties, have returned to pre-pandemic levels. In contrast, motor injury claims were 43% below pre-pandemic levels in the first quarter of 2026. A quarterly breakdown of the data shows that this divergence between traffic volumes and claims began to emerge as the 'whiplash reforms' were introduced. The indicates that the reforms are key to explaining why claims have continued to fall, despite an increase in traffic volumes and casualties. The number of motor injury claims made in 2025/26 was the lowest on record. Introducing an OIC type system in Northern Ireland would not provide access to justice.

It is also important to note that the introduction of the OIC portal intended for use by litigants in person in England and Wales, alongside the introduction of a tariff award system for whiplash claims, was delivered on the promise of savings for car insurance policyholders. This promise has not been delivered. APIL data analysis shows that motor insurers have saved £2.3 billion on injury claims (source: ABI data). The cost of injury claims settled by motor insurers has fallen by 12% (source: ABI data). In contrast, the price of motor vehicle insurance has increased by 70%, according to ONS data.[7] In essence, in England and Wales, the 'whiplash reforms' have delivered significant savings for insurers, but consumers have not benefited and have lost access to justice.

We would also flag that the number of motor claims registered in Northern Ireland is significantly lower than in England and Wales. In 2025, 13,320 motor claims were registered in Northern Ireland. This number only represents 5% of the number of motor claims registered in England and Wales.[8] It is hard to see how the expense and time required for this reform is warranted. Introducing a digital portal would come at a significant cost to the Government and to legal professionals and firms which would have to adapt their IT systems, change their way of working and retrain and restructure teams. Consideration must also be given to factors unique to the Northern Ireland legal market, including its smaller and more fragile services base, as well as the challenges associated with rural access. In addition, we note that the Gillen report, while supportive of innovation and digitalisation, emphasises that such changes should only be pursued where accompanied by appropriate safeguards, proportionality, and adequate user support.[9]

[6] APIL report on the impact of the whiplash reforms, including the OIC. Please see the relevant opinion polling in Annex 1.
[7] APIL analysis of ABI and ONS data (May 2026)
[8] England and Wales data obtained via FOI to the Compensation Recovery Unit (CRU). Northern Ireland data obtained via FOI to the Department for Communities Northern Ireland.
[9] https://www.judiciaryni.uk/publications/review-groups-report-civil-justice

Digital literacy

Whilst the trend is towards digital capability, we are not yet in a position where everyone has access to the internet or technology. For instance, individuals in rural areas, low-income households, or marginalised communities might not have the necessary technology, and even when they have access to technology, they may lack the skills or familiarity to navigate online platforms and tools effectively. It has been recognised that even digitally literate individuals can encounter barriers when dealing with legal issues and technology.

Discussion Point - **Exemptions, safeguards and Mitigations: Please let us know whether you believe any safeguards or other mechanisms should be put in place. Do you believe court approval should be mandatory for all settlements involving vulnerable adults and, if so, what would your definition of a vulnerable adult be?**

We strongly disagree with the introduction of a digital portal. However, any move towards the introduction of an OIC style system should exclude protected parties and children (under 18). In England and Wales protected parties are defined as “people other than children who are seen by the law as not able to manage their own legal affairs”. There would also need to be very careful consideration of how those who are vulnerable, but who do not fall into the category of protected party, would be able to access justice.

Discussion Point - Economic and Social Impact: Please share your views on the effect this would have on small legal practitioners and the broader legal economy.

Please see our comments above regarding costs to Government and firms.

The Public Office (Accountability) Bill

Discussion Point - The Public Office (Accountability) Bill: Please tell us your views on extending this provision to Northern Ireland, including whether you believe there are any specific historical or cultural factors in Northern Ireland that should be considered when implementing parity of representation for bereaved families at inquests?

We believe the provision for non means tested legal aid for bereaved families proposed in the Public Office Bill should be extended to Northern Ireland. It would be unfair for the provision to apply to all UK jurisdictions except Northern Ireland.

Any queries or comments related to this response should be directed to:

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Annex 1 – APIL opinion polling on legal representation

LEGAL REPRESENTATION IS VITAL

Victims of negligence with injuries affected by the 'reforms' can no longer recover their legal costs from the at-fault insurer. This change was made on the basis that people could easily claim for these injuries without legal support.

However, APIL's opinion polling has found that this support is vital if people are to have the confidence to claim compensation for these injuries. This polling also found that the removal of cost recoverability for these injuries does not have public support.

LEGAL REPRESENTATION IS VITAL IF PEOPLE ARE TO HAVE THE CONFIDENCE TO CLAIM COMPENSATION

As part of APIL's opinion polling, people were asked how they would feel about claiming compensation for injuries affected by the 'reforms' if they did not have legal support...

- If they did not have legal advice, just **27%** of adults in England and Wales say they would trust the at-fault insurer to offer them a fair amount of compensation.

- Adults in England and Wales were provided with an explanation about the steps involved with claiming compensation on the OIC portal. **Fewer than a third (29%) said they would be likely to complete this whole process on their own, without legal advice. Just 12% said they would be very likely to complete the process without legal advice.**

- Of those who used legal support to claim compensation for injuries captured by the 'reforms', **55%** say they would have never considered claiming if they had not had this support.

THE PUBLIC BELIEVE LEGAL FEES SHOULD BE COVERED BY THE AT-FAULT INSURER

61% of adults in England and Wales think that, if someone makes a successful claim for the types of injuries affected by the 'whiplash reforms', their legal costs should be covered by the at-fault insurer. Just **6%** think that the insurer should not cover these costs.